

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Francesca B. Kuglen Atty. Docket: K551-003.B
Serial No.: 10/764,279 Examiner: Robyn Kieu Doan
Filed: January 22, 2004 Art Unit: 3732
For: STRETCH COMB HAIR RETAINER
Confirm. No.: 9690

DECLARATION OF FRANCESCA B. KUGLEN

Under 37 CFR 1.131

This declaration is offered in view of information submitted to Applicant regarding the alleged importation and sale in the United States, and disclosure in a printed publication, of a dual comb hair accessory (referred to as the “Elsamarie Comb”) by Deichmann+Co LTD, doing business as Evita Peroni, prior to but less than one year before Applicant’s provisional application filing date. This information is being disclosed in Applicant’s Supplemental Information Disclosure Statement filed concurrently herewith. An Evita Peroni product brochure dated “Summer 2003” that purports to show the Evita Peroni Elsamarie Comb was submitted with Applicant’s Information Disclosure Statement filed October 5, 2007. This declaration is also submitted to disclose facts that lead Applicant to believe that the Elsamarie Comb is at least in substantial part not original to Deichmann+Co LTD, but a substantial copy of an early confidential prototype of Applicant’s invention acquired by a manufacturing source in China.

I declare as follows:

1. As evidenced by the following, I first conceived and made samples of the stretch

comb hair retainer described and claimed in my above-identified patent application in the year 2000. I did not make drawings of or photograph my original designs and as explained below, my original samples are no longer available to me.

2. To the best of my recollection, I first conceived of my new stretch comb hair retainer in late summer or early fall of 2000. This involved obtaining samples of the wire loop “pick combs” from Japan and making up a set of samples of the new beaded hair retainers. At the time, I was under contract with Goody Products, Inc. (“Goody”), which had first and exclusive negotiation rights for designs of any new hair accessory and grooming products I developed. My contract with Goody contained a confidentiality provision covering any new designs I disclosed to them and effectively prevented me from marketing or selling them until Goody had exercised its rights under our contract. The relevant portion of my agreement with Goody is attached hereto as **Exhibit A**. This contract resulted from the purchase by Goody of my business called Jontee Accessories in 1995 and was terminated in 2006.

3. I first disclosed my new stretch comb hair retainer to Goody Products in October 2000. This disclosure involved my sending a first set of samples to Goody via Federal Express, and was made to give Goody an opportunity to evaluate the product and negotiate a licensing arrangement. (At the time I had a licensing arrangement with Goody for other of my hair accessory designs.) Attached hereto as **Exhibit B** is a copy of an American Express receipt for this Federal Express shipment dated October 17, 2000. Some form of correspondence would have accompanied this shipment and email correspondence likely preceded the shipment, but copies of this correspondence cannot be located. I do not have much in the way of correspondence and email correspondence going back this far, due in part to a hard drive crash I

experienced in 2003.

4. The samples I sent to Goody in October 2000 corresponded to the “flower” bead pattern illustrated in Fig. 5 of my patent application, and a sample of a beaded crisscross version of my stretch comb hair retainer with no interconnecting beads corresponding to the design shown in the photograph attached hereto as **Exhibit C**.

5. At the time I sent my first specimens to Goody, my contact at Goody was Lisa Osborne, Marketing Manager for Fashion Accessories. I met with Ms. Osborne in Atlanta, Georgia on February 26, 2001. At this meeting Ms. Osborne and I discussed a number of my product designs, including my new beaded stretch comb hair retainer. Attached as **Exhibit D** is a redacted copy of a memorandum I sent to Ms. Osborne following that meeting wherein, on page 2 paragraph 3, I refer to the new stretch comb hair retainer as “a new beaded version” of my “Hair Accordians.” (“Hair Accordion” is another stretch comb hair retainer product I previously invented, and is disclosed in my U.S. Patent No. 6,123,086.)

6. Between March 2001 and the tragic events of Sept 11, 2001, due to travel conflicts and schedules on both sides, I was unable to arrange for a meeting with Goody management to discuss my new stretch comb hair retainer. I was told by Ms. Osborne in late August that the 2002 product line was already “put to bed,” and that my new product had not been fully costed and reviewed, but that she would resubmit my samples for consideration for 2003.

7. In February or March 2002, I was told the first set of samples I shipped to Goody in October 2000 were “accidentally misplaced,” and so I sent them a second set of samples which was identical to the first set of samples. I would most likely have sent these samples via Federal Express, UPS or USPS, but have been unable to locate a receipt or any correspondence relating

to these samples. Like the first samples, these second samples were submitted in confidence under my existing agreement with Goody.

8. Between April and December 2002, I received little feedback from Goody regarding my new stretch comb hair retainer. By the end of this period, my contact, Lisa Osborne, had left the company, and Goody had experienced a significant turnover in their staff and management. At the beginning of 2003, I called Howard Heckes, President of Goody Products and explained the situation. He invited me to Goody to make a presentation. He also told me that the original two sets of samples I had submitted to Goody could not be found. Accordingly, I supplied them with a third set of samples and made a presentation to Goody personnel on March 12, 2003. Besides me, this presentation was attended by Howard Heckes, Charlene Charbonnet, and John Anderson. At this meeting, all of them told me they thought my stretch comb hair retainer was novel and unique and expressed enthusiasm about its marketability, leading me to believe that they would most likely license the product. At the time Goody referred to my new stretch comb hair retainer product as the “beaded hair accordian.” Attached hereto as **Exhibit E** is a redacted copy of a memorandum I prepared and sent to Goody concerning this meeting and making reference to the “Beaded Hair Accordian” design.

9. On April 28, 2003, I filed a U.S. provisional patent application for my new stretch comb hair retainer. The above-identified non-provisional application claims the benefit of my provisional application.

10. On August 14, 2003, I received an email message from a Kelly McBeath at Goody informing me that after “much deliberation” Goody decided not to move forward with my “beaded hair accordian” product. A copy of Ms. McBeath’s email is attached hereto as **Exhibit**

F. I was surprised Goody declined my new design after their initial enthusiasm over the product. Consequently, I located and then contacted Goody's ex-employee, Lisa Osborne, with whom I had initially dealt, to see if she had any advice. During this conversation Ms. Osborne confided to me that the samples I provided to Goody in 2000 and 2002 were not "lost or misplaced," but, without my authorization, were sent to the factories in China who manufacture hair accessory products for price quotations. Ms. Osborne apologized and told me she had tried to retrieve my samples without success. She acknowledged that this put me at great risk of being copied. I know this to be true. I have experience in working with Chinese manufacturers of hair accessory products, and know that products are widely copied by these manufacturers. There are only a few Chinese factories large enough to handle the production volumes required by the dominant hair accessory brands such as Goody, Conair, Scunci, Helen of Troy, Evita Peroni, Alexander of Paris, and Fantasia, and all the major brands use the same factories.

11. I believe the Elsamarie Comb, which Evita Peroni states was launched in their Pre-Spring 2003 collection, was sourced in China from a Chinese manufacturer who was given samples of my stretch comb hair retainer by Goody. I also believe the Elsamarie Comb shown in the Evita Peroni product brochure dated "Summer 2003" was derived from one of my original samples. I believe this in part because the bead design shown on the Evita Peroni brochure attached hereto as **Exhibit G** is a substantially identical to the bead design of one of my samples. (Compare **Exhibit G** with the bead design shown in shown **Exhibit C**, which is a replica of one of my original samples.)

12. In the course of my above-mentioned conversation with Ms. Osborne, Ms Osborne urged me to take the product to market myself, which I was now free to do because Goody had

declined the product. Accordingly, I created a product line of different colors focused on my original bead design patterns and introduced the product to the market in November 2003.

Since then the product has been extremely well received by consumers. In November 2006, a company called Sennits, LLC, of which I am a principal, was formed to exploit this new product, which is now marketed under the trademark HAIRZING.

The undersigned declares that all statements of her own knowledge made herein, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements made jeopardize the validity of the above-identified application, or any patent issuing thereon.

Date:

Jan 7, 2009


Francesca B. Kuglen

Application Serial No. 10/764,279

Declaration of Francesca Kuglen

37 CFR 1.131

EXHIBIT A

ASSET PURCHASE AND SALE AGREEMENT

This **ASSET PURCHASE AND SALE AGREEMENT** (this "Agreement") is entered into as of this 29th day of August, 1995, by and between GOODY PRODUCTS, INC., a Delaware corporation ("Buyer"), and FRANCESCA KUGLEN, DOING BUSINESS AS JONTEE ACCESSORIES, 1933 Davis Drive, Suite 280, San Leandro, California 99457 ("Seller").

WITNESSETH:

WHEREAS, Seller is engaged in the business of importing, distributing and selling human hair care accessory items (the "Business"); and

WHEREAS, Buyer desires to acquire the Business by purchasing from Seller inventory, and certain other assets, and Seller desires to sell such inventory, and other assets to Buyer, on the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. Transfer of Assets; Excluded Asset.

(a) Transfer of Assets. Upon the terms and subject to the conditions of this Agreement, Seller agrees to sell, assign, transfer and convey to Buyer at Closing (as hereinafter defined), and Buyer agrees to acquire from Seller, the following assets, properties and business relating to the Business owned by Seller at Closing, of every kind and description and wherever located (the "Assets"), including but not limited to the following:

(i) all product inventory, including finished goods, products in process of manufacture, parts, raw materials, packaging, packaging materials and displays, including any such items that are in transit at the time of the Closing (the "Inventory");

(ii) all accounts receivable;

(iii) all Business Property Rights (as hereinafter defined) and goodwill relating to the Business and any and all written material relating to the Business produced by or in the custody of employees of Seller;

(iv) all business records necessary for the conduct of the Business after the Closing, including, without limitation, all price lists, customer lists, credit, sales and purchase records, sales literature and data respecting product returns, failures and defects and quality control (the "Business Records");

(b) Buyer's Right of First Refusal to Negotiate for License on Future Products Developed by Seller. The parties agree that after the date of this Agreement, Buyer will have a right of first refusal to exclusively negotiate with Seller in good faith for an exclusive license on any hair accessory or grooming product, including any Business Property Rights related thereto, developed by Seller (each, a "New Product") for manufacturing, distribution and sale worldwide in all retail sales outlets (including, without limitation, discount, drug, grocery, salon and beauty supply and variety chains), all military exchanges, all television marketing venues, direct-to-consumer venues and infomercials, all warehouse clubs, and all chain department stores (including, without limitation, Sears, Roebuck & Co., J.C. Penney, Montgomery Ward, Mervyn's, Macy's, Bloomingdales, and Nordstrom) (the "Territory"). For each New Product, Seller will submit to Buyer a written proposal describing the New Product in reasonable detail, and Buyer will then have thirty (30) days in which to notify Seller of its decision to exercise its right of first refusal. If the parties agree to a licensing arrangement with respect to a New Product, (i) Buyer will pay Seller reasonable research, development and related expenses, and (ii) the parties will promptly negotiate in good faith with respect to any other terms of the license arrangement. Regardless of whether the parties agree on a licensing arrangement with respect to a New Product, each party will keep in confidence any and all information confidential to the other party, including the contents of patent applications disclosed by Seller to Buyer during the negotiation and term of such a license arrangement (provided, however, that Buyer may disclose such information to any Buyer Affiliate). The parties further agree that the provisions of this Section 13(b) will apply to Seller's grooming product contained in the sealed envelope to be delivered to Buyer at the Closing only with respect to distribution and sales of that product in the Territory (other than television marketing venues).

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

GOODY PRODUCTS, INC.

By: 

Name: George E. Hamilton

Title: Vice President - Controller

**FRANCESCA KUGLEN, DOING BUSINESS AS
JONTEE ACCESSORIES**

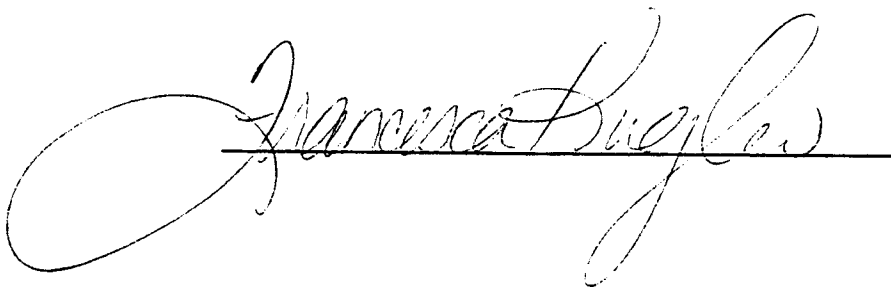


EXHIBIT A -- KUGLEN 131
DECLARATION

Application Serial No. 10/764,279

Declaration of Francesca Kuglen

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EXHIBIT B

Corporate Cardmember Name
FRANCESCA B KUGLEN

Corporate Account Number
37[REDACTED]-71008

Closing Date Page 6 of 7
11-28-00

APDN01000
2329  Small Business
Services

ITEM 23
CHEAP TICKETS 002024800-7554333 CA \$421.95

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
[REDACTED]	11/17/00	000349879	6
Service Establishment and Location CHEAP TICKETS 002024800-7554333 CA			
Record of Charge TRAVEL AGENCIES			
S/E # 5042803817			
TOTAL CHARGE AMOUNT			\$421.95

ITEM 24
FEDEX #823974940270 OAKLAND CA \$24.47

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
[REDACTED]	11/13/00	397494027	10
Service Establishment and Location FEDEX #823974940270 OAKLAND CA			
Record of Charge TO: [REDACTED] 94802 CA FROM: CLEVER RESULTS 94802 001 EXP SVR PKG 11 LB AWB823974940270 FEDEX CUSTOMER SERVICE #1-800-822-1147 ROC NUMBER 3974940270			
S/E # 4416508471			
TOTAL CHARGE AMOUNT			\$24.47

ITEM 25
FEDEX #823883151851 OAKLAND CA \$11.93

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
[REDACTED]	11/14/00	388315185	18
Service Establishment and Location FEDEX #823883151851 OAKLAND CA			
Record of Charge TO: [REDACTED] 94105 CA FROM: CLEVER RESULTS 94802 001 PRIORITY LTR 1 LB AWB823883151851 FEDEX CUSTOMER SERVICE #1-800-822-1147 ROC NUMBER 3883151851			
S/E # 4416508471			
TOTAL CHARGE AMOUNT			\$11.93

ITEM 26
FEDEX #822499760464 OAKLAND CA \$21.29

Cardmember Account No.	Date of Charge	Reference Code	Approval Code
[REDACTED]	10/17/00	249976046	10
Service Establishment and Location FEDEX #822499760464 OAKLAND CA			
Record of Charge TO: [REDACTED] 30269 CA FROM: CLEVER RESULTS 94802 001 STANDARD PKG 2 LB AWB822499760464 FEDEX CUSTOMER SERVICE #1-800-822-1147 ROC NUMBER 2499760464			
S/E # 4416508471			
TOTAL CHARGE AMOUNT			\$21.29

*1st Beaded Accordians
sent to Goody under
Confidentiality*

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Declaration of Francesca Kuglen

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EXHIBIT C

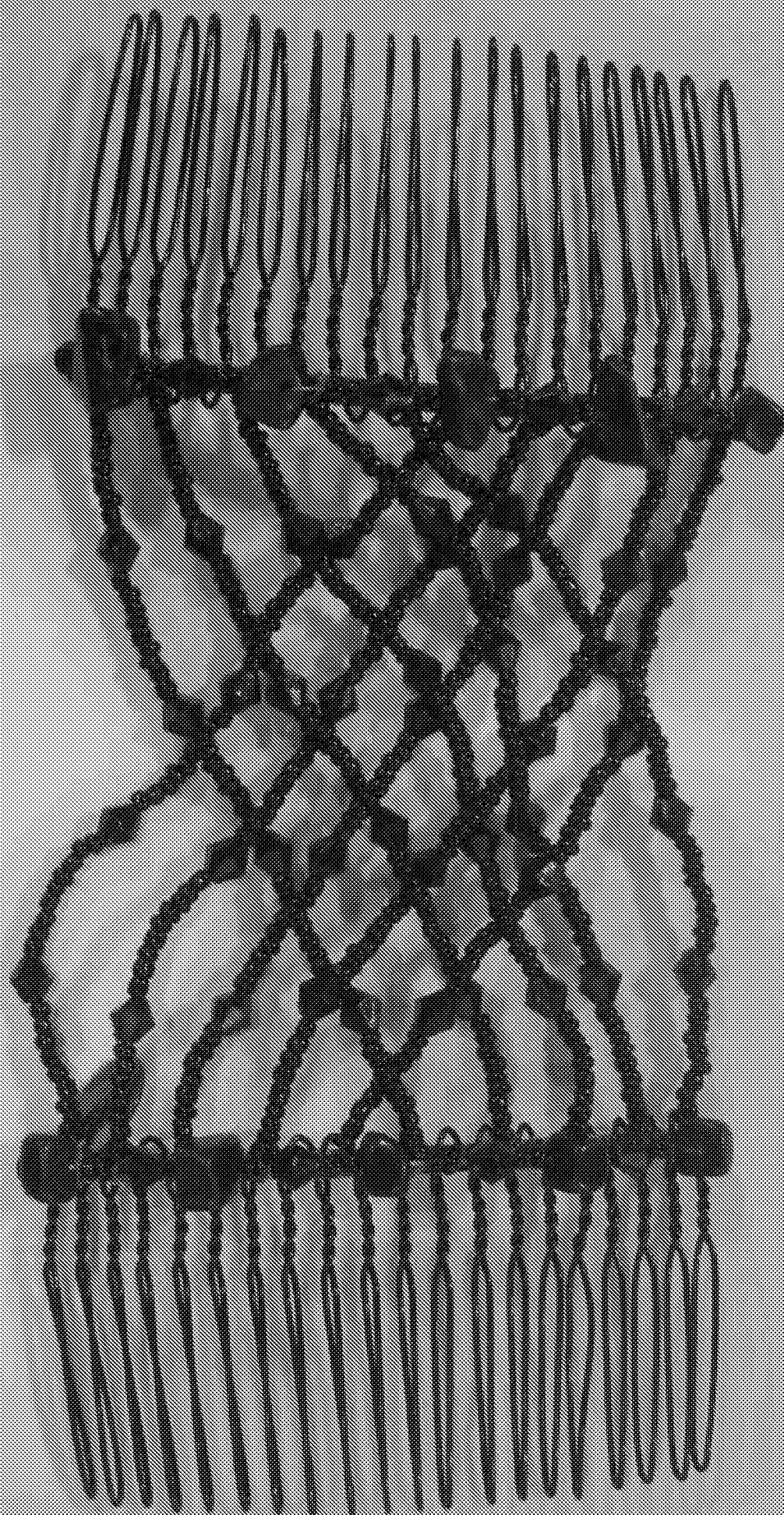


EXHIBIT C -- KUGLEN 131
DECLARATION

Application Serial No. 10/764,279

Declaration of Francesca Kuglen

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EXHIBIT D

March 7, 2001

TO: Lisa Osborne

FR: Francesca Kuglen

RE: Grip Clip tops, Contract, and Royalties

Attached are the following:

- 1) Partial copies of the Asset Purchase and Sale Agreement contract between Goody Products and myself in 1995. The only noteworthy areas for you at this time are what products were acquired by Goody in 1995 and under what licensing terms, so those are the sections attached. The contracts themselves are quite lengthy (2 file folders) and deal mainly with payments, inventory, valuations, etc. which are irrelevant to our needs now.

HISTORY:

EXHIBIT D -- Kuglen
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3) Of all these products, I STRONGLY believe that Hair Accordians (under my new trademark "Hugger Combs") should be tested in the Goody line. They are patented, work in all hair types, and are PROVEN sellers at retail. In fact, this was the product that most interested Goody and led them to approach us in the first place.

I would appreciate knowing your intentions for this product. I do not expect it to be in the Goody line in 2001, but would expect it to be in the line in 2002. Knowing in advance what the situation is will allow me to sell them on QVC or license them to the mass market elsewhere.

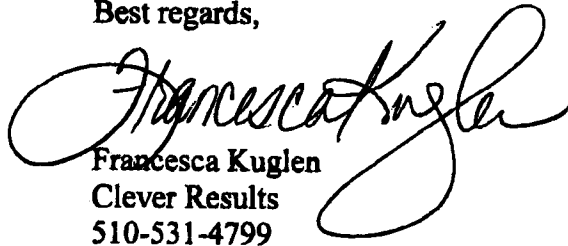
- EXHIBIT D -- Kuglen
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5) **Shapes for Grip Clip tops.** Enclosed are some barrette shapes for new Grip Clip tops. I have asked Bon Fame to send you swatches of some acrylic colors that might look wonderful in these bodies. Expect them within a week.

5) **Promo Ideas:** While skimming some foreign sourcing magazines, I came across these and thought you might get some promo ideas from them.

It was wonderful meeting you in Atlanta. Best wishes as you build your line. Please let me know if there is anything I can do to help you in any way.

Best regards,



Francesca Kuglen
Clever Results
510-531-4799

Application Serial No. 10/764,279

Declaration of Francesca Kuglen

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EXHIBIT E

March 20, 2003

TO: Howard Heckes, John Anderson, and Charlene Charbonnet
FR: Francesca Kuglen
RE: Licensing and Standing Contracts

1) Enclosed please find an abbreviated copy of the Sale Agreement from 1995 when Goody acquired my company, Jontee Accessories. I omitted the useless legalese of the first pages, but included the Table of Contents and Exhibit pages so you can see that nothing omitted is relevant to our discussions now. It is just pages of jargon.

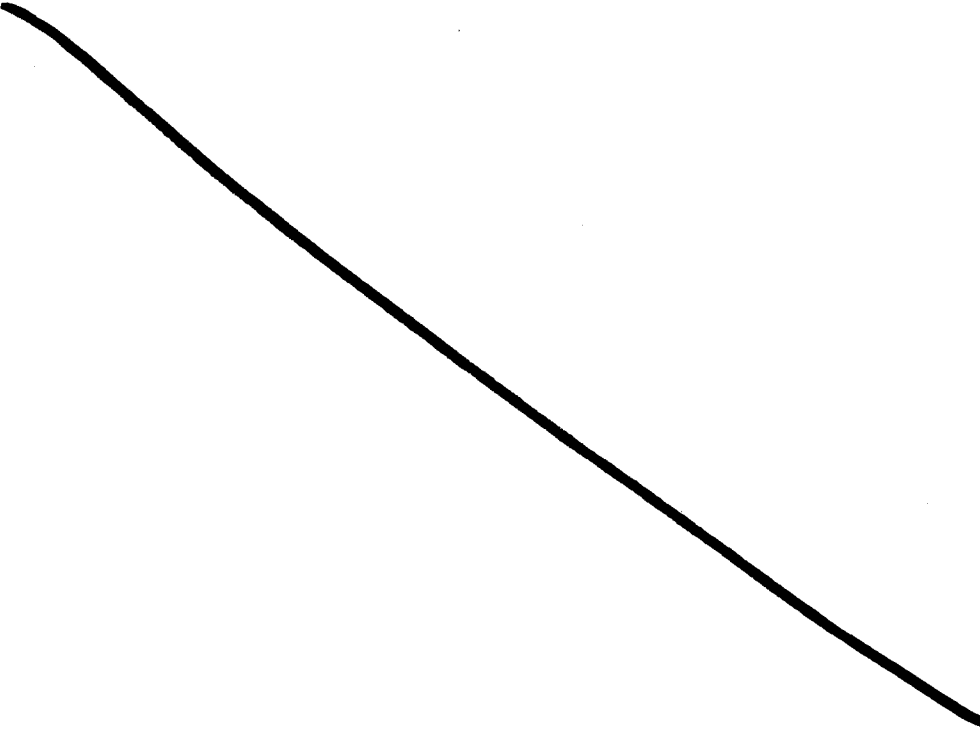
2) The continuing contractual obligations for both parties begins on page 10. I have highlighted the truly important areas. Most importantly:

- Pg 10/Clause 13: Everything in the indexes is already licensed to Goody at ~~royalty~~. No new contracts need to be signed, but you do need to tell me within thirty days which items you intend to develop and bring to market. This includes the ~~Rates (soft foundations), Camsclippers (metal clack hair clips), Beaded Accordion, Beaded circle/Figure eight shape with stick, and Beaded Bells~~. The only Hair Accordians covered in this agreement are the original fabric band version. The Beaded Accordians are new and will need a separate licensing agreement.
- Pg 10/Clause 13 a-(iv) cover all the standard terms of paying royalties. Nothing needs to be changed on these.
- Pg 11/Clause 13 b is important. I must offer Goody the First Right of Refusal on any new hair accessory products I design. If you want to develop the product, you must notify me in writing within thirty days of your intention to do so or I have the right to take it elsewhere and license to another company or produce it myself.



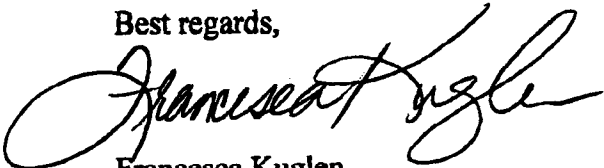
The Beaded Hair Accordion we met in your offices about on March 12 falls under this clause. I need your confirmation on whether or not you plan to move ahead with this by April 12. If you choose to do so, we need to negotiate a new licensing agreement.

EXHIBIT E -- Kuglen
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Hope this helps bring us all to the same page. I have strong feelings about the Beaded Accordion (as well as the other products you are considering releasing at market) and I will do whatever I can to make this mutually successful for us all.

Best regards,



Francesca Kuglen

Fk:dtamaki, kskinner

Enc.

Application Serial No. 10/764,279

Declaration of Francesca Kuglen

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EXHIBIT F

From: McBeth, Kelly [Kelly.McBeth@goody.com]

Sent: Thursday, August 14, 2003 9:45 AM

To: fkuglen@earthlink.net

Cc: Heckes, Howard; Hansen, Rebecca; Charbonnet, Charlene; Scarbrough, John
Francesca,

After much deliberation, we have decided not to move forward with the beaded hair accordian.

We feel that the product is not the right fit for Goody at this time.

We wish you the very best in all your endeavors, and hope to work with you again in the future.

Sincerely,

Kelly McBeth

Kelly McBeth

Assoc. Brand Manager

Goody Products, Inc.

400 Galleria Pkwy.

Suite 1100

Atlanta, GA 30339

(770)615-4697

kelly.mcbeth@goody.com

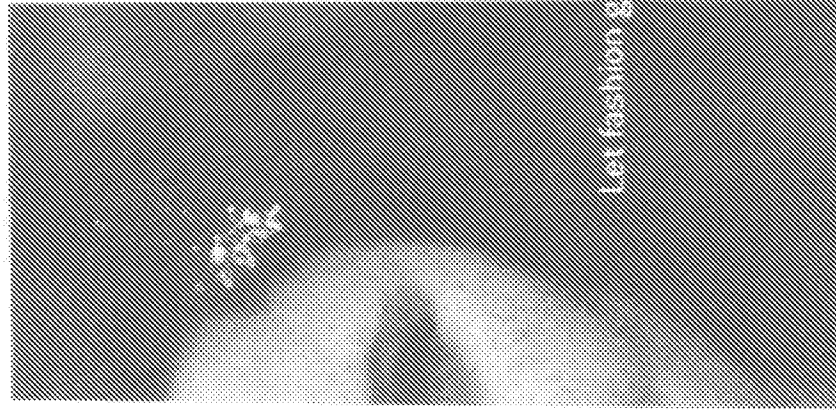
EXHIBIT F -- Kuglen
131 Declaration

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Declaration of Francesca Kuglen

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EXHIBIT G



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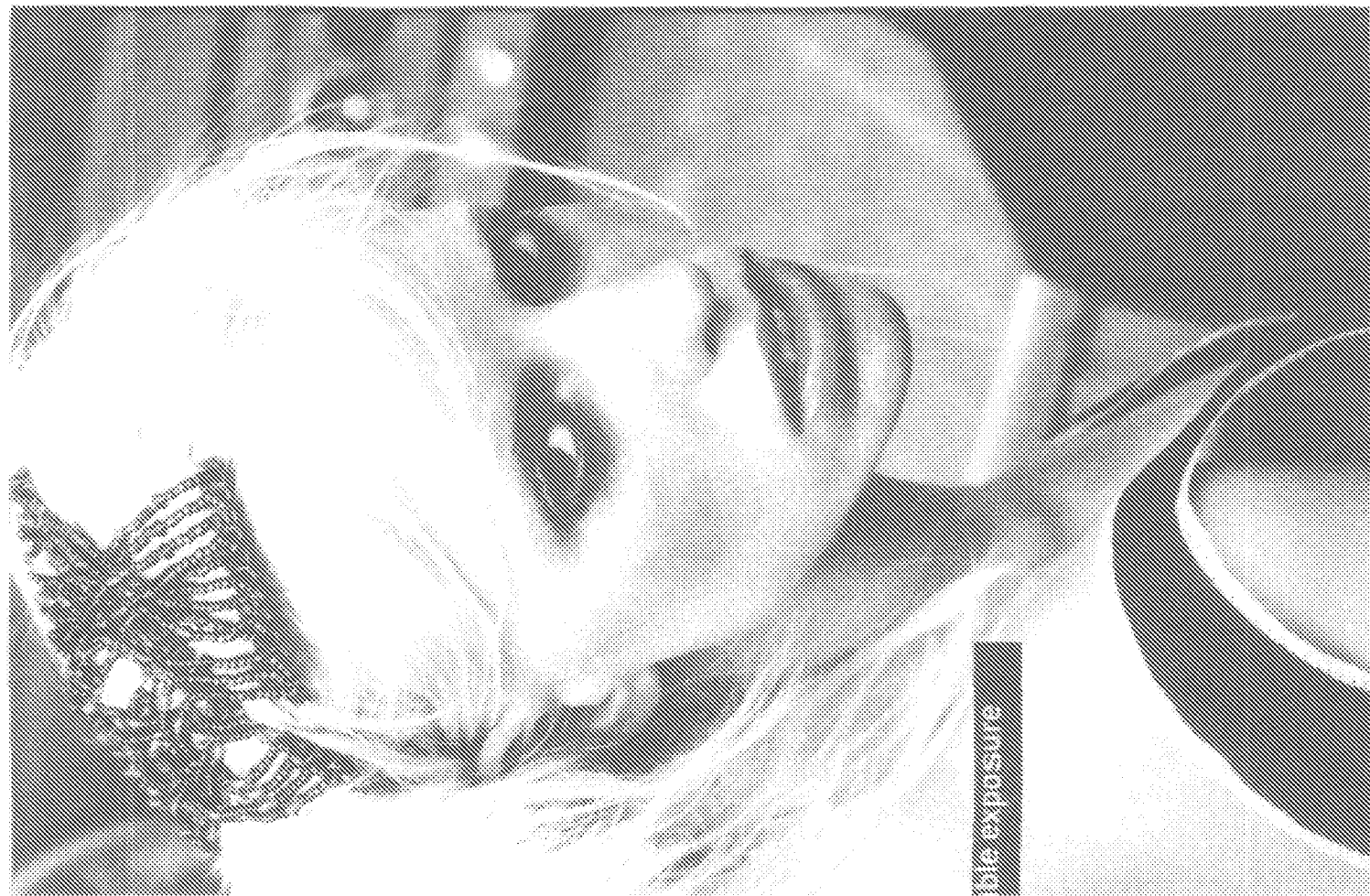
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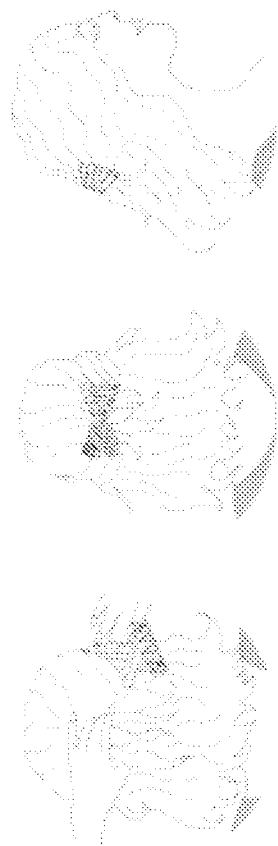
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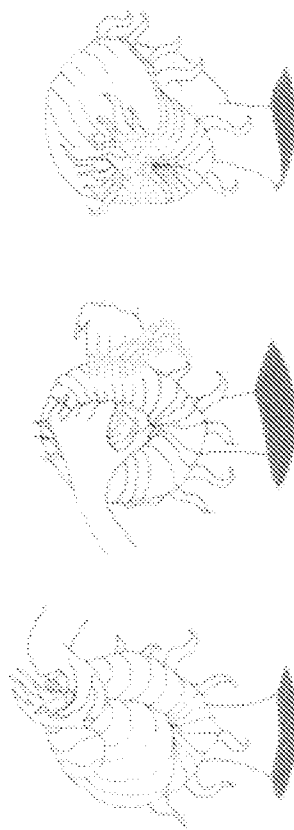
SUMMER 2003



ble exposure



Loosely gather the top portion of your hair to the back and hold. Push one of the combs over the side. The beaded design is sitting on stretch elastic. Pull the second comb over to the opposite side, turn the comb under and push it back to center, a dazzling way to hold your hair off your face.



When temperatures rise, toss up the leaves you breathlessly cool. Pull your hair back into a ponytail, twist and lift the ends upward and hold with one hand. Insert one comb to the side of the roll.

Cross the second comb over the roll, turn it under and insert, pushing it back to center.



Gather your hair into a ponytail. Firmly twist the hair and lift it straight up, continuing to twist to the ends. Smooth out the roll and leave the ends free for a more casual look. Insert an OSHA PERONI French comb. Wrap a small amount of hair from the edge of the roll and slide the comb across the scalp. If the comb is too tight, take less hair from the roll. If it's too loose, take more hair.